IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 131 of 2002
WITH
SPECIAL CRIMINAL APPLICATION No. 132 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMJI ROY & 1 - Applicant(s)
Versus
GOHIL VIJAYSINH PUNJSINH - Respondent(s)

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Appearance :
MR DIPEN DESAI APP for Applicant(s) : 1 - 2.
RULE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/10/2007

COMMON ORAL JUDGMENT

1. In these petitions, the State Government has challenged a common order passed by the learned Sessions Judge Sabarkantha at Himatnagar in two separate Criminal Appeal Nos.19 of 1995 and 22 of 1995 filed by the petitioner.

2. The issue pertains to the confiscation of a jeep which was found to be carrying banned forest produce (bamboo).

3. The proceedings under Forest Act were initiated upon interception of the vehicle carrying forest produce. The competent Authority i.e. Deputy Forest Conservator of Forest passed an order in the year 1995 by which he ordered confiscation of the goods as well as the vehicle involved namely jeep No. GAQ -5499.

4. Respondent in Special Criminal Application No.131 of 2002, Vijaysinh Gohil who is the registered owner of the vehicle in question, preferred Criminal Appeal No. 22 of 1995. Respondent in Special Criminal Application No. 132 of 2002 Karansinh Vaghela , who is claiming to have purchased the vehicle in question preferred Criminal Appeal No.19 of 1995. Both these appeals came to be allowed by common impugned Judgment by the learned Sessions Judge. The State has therefore, approached this court in the present petitions.

5. In allowing appeal and setting aside the confiscation of the vehicle,

the learned Sessions Judge observed as follows :

> "In these matters, it is an admitted position of fact that the registered owner is one Vajesinh Punjasinh and he had sold the said jeep to Karansinh Vajesinh Vaghela, the appellant of Appeal No.19/95. Both these owners were not present at the site. There is not finding that they had any knowledge or had connived for the transportation of the said goods in their jeep. the documentary evidence categorically goes to show that neither the purchaser owner nor the registered owner were knowing that the jeep is being used for transporting the goods. The decision of the Apex court relied by the learned advocate for the appellant would apply in the facts of this case as owner would mean registered owner of the vehicle, 1998 (1) GC, 746 (SC). In this case also the authoritative pronouncement would apply as the authorities have to establish that the owner of the jeep had any knowledge about the jeep being used for carrying forest products in contravention of the provisions of the Forest Act. Further, as per the provisions of Sec.61 (a) and 61 (b) when there is no proof that the use of the vehicle was with the consent or connivance of the owner of the vehicle. Connivance of his employee is of no consequence that is what held by our own High Court in the case of Navinchandra K. Chavda Vs. Range Forest Officer, 1993 (1) GLR 948. Further the provisions of Sec. 61 (b) has not been complied with and therefore, this Court under the provisions of Sec. 61 (d) would have to set aside the order of confiscating authority. After the order came to be passed, the order was served to Vajesinh

> Punjasinh Gohil, who was not made party though the officer was knowing that the Hon'ble High Court has given interim custody of the vehicle to him. However, in the record, his name nowhere figures which clearly goes to show that he was not issued any show cause notice though he was registered owner and though the said facts was in knowledge of the concerned authority.
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> 10. Thus, in light of the decisions, which are binding and apply here the order cannot be sustained and therefore, qua both appellants, these apples will have to be allowed. Hence, I pass the following order."

6. Having heard learned A.P.P. Shri Dipen Desai for the State, I find that the observations and conclusions of the learned Judge are not borne out from the record. In fact, there was voluminous evidence to suggest that actual owner Karansinh Vajesinh Vaghela was traveling in the vehicle when the goods were seized. His lack of knowledge about the vehicle being used for illegitimate purpose, therefore, cannot be believed. The witnesses, who were traveling in the vehicle have stated before the Authorities that said Shri Vaghela was traveling in the said vehicle when bamboo was being carried.

7. Reliance placed on the decision of learned Single Judge of this Court in the case of **Navinchandra K. Chavda V. Range Forest Officer and Anr.** reported in **1993 (1) GLR 948**. In the said decision, the

learned Judge observed that "the vehicle is not well founded used for unauthorized transportation of forest produce cannot be confiscated unless there is proof that the use was with consent or connivance of the owner of the vehicle." In the present case, Karansinh Vaghela was found travelling in the vehicle with the goods.

8. The observations of the learned Judge that Vajesinh was not a party is not supported by the evidence on record. It is pointed out that he was not only a party, but he was also served with notice. In fact, he had approached this Court by filing Special Civil Application No.1749 of 1994, in which learned Judge recorded the statement made by the learned A.P.P. that if the petitioner cooperates in the said proceedings, respondent No.2 will complete the said proceedings within four weeks. Upon statement, the learned Judge issued appropriate directions. It is thus, clear that said Shri Vaghela was not only conscious about the proceedings, but he had also approached this court seeking early disposal thereof. In his petition, this court had given suitable directions.

9. On all counts, therefore, I find that the observations of the learned Sessions Judge are contrary to the record.

10. The Deputy Conservator of Forest has given detailed reasons for

passing order of confiscation. The same ought not to have been set aside without full examination of the record. The learned Sessions Judge passed impugned order on the premise, which was not borne out from the record.

11. In the result, the impugned order of the learned Sessions Judge is quashed. Rule is made absolute in both these petitions.

(AKIL KURESHI, J.)

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